IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 11804 of 2007(E)

PETITIONERS:
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1. **P.SHERLY, SELECTION GRADE ASSISTANT,**
   GENERAL ADMINISTRATION DEPARTMENT (ACCOUNTS),
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
   RESIDING AT: VALIYAVILAYIL, TC 7/1006(1),
   BHASI NAGAR, KOCHULLUR, MEDICAL COLLEGE P.O.,
   THIRUVANANTHAPURAM.

2. **S. SREEVALSAN, SELECTION GRADE ASSISTANT**
   GENERAL ADMINISTRATION DEPARTMENT (P& ARD),
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
   RESIDING AT: SREERANGAM, ARASUMMOODU,
   KULATHOOR, P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.MURALI PURUSHOTHAMAN
SRI.P.M.BENZIR
SRI.DEEPU LAL MOHAN

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS**
   PRINCIPAL SECRETARY TO GOVERNMENT, GENERAL
   ADMINISTRATION DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE PRINCIPAL SECRETARY TO GOVERNMENT,**
   GENERAL ADMINISTRATION DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.S.VISHNU
BY GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR,J.

WP(C)NO.11804 OF 2007-E

Judgment

The petitioners are Selection Grade Assistants, working in the General Administration Department of the Administrative Secretariat, Thiruvananthapuram. Being members of the Scheduled Caste, they claim exemption from passing the obligatory test and also seek consequential promotion to the post of Assistant Grade I with retrospective effect, in the light of the test exemption. Claiming this relief, the first petitioner has filed Exts.P1 to P3 representations and the second petitioner has filed Ext.P4 representation before the 1st respondent. The learned counsel for the additional respondents 3 and 4 submits that the claim of the petitioners is highly belated and therefore, the party respondents are entitled to sit back. If the prayers of the petitioners in the aforementioned representations are allowed, their seniority will be affected and therefore, he opposes the prayers of the petitioners. He also submits that because of the pendency of Writ Petition (C) No.2269/06, the Government have taken a conscious decision, not to dispose of Exts.P1 and P4 representations.

2. I heard the learned Government Pleader appearing for the respondents also. She submitted that because of the pendency of Writ Petition(C) No.2269/06, final orders on the representations of the petitioners are not passed.

3. The interim order in Writ Petition (C) No.2269/06 is to the effect that promotions if any made, will be subject to the result of the Writ Petition. The same does not stand in the

way of the Government, considering the claim of the petitioners, who are members of the Scheduled Caste. Assuming the submission of the learned counsel for the party respondents that the Government has taken a conscious decision not to dispose of Exts.P1 to P4 representations, is correct, I feel that such a stand from the part of the Government is unjustified. The Rules governing exemption from test qualification have been introduced for the benefit of the candidates, belonging to the Scheduled Caste, who were sidelined and marginalised from the main stream for centuries. So, even if there is some delay to assert their rights, the same cannot be pressed into service as a ground to reject their claim, if they are otherwise eligible. The claim made by the petitioners is based on a statutory Rule. That means, it is a statutory right. Therefore, the official respondents have a corresponding duty to respect their rights in this regard. They cannot take any conscious decision and sleep over the rights of the petitioners, which are secured by statutory provisions. The concept of conscious decision, not to make promotions/appointments, cannot be pressed into service here. In the result, the Writ Petition is disposed of directing the 2nd respondent to consider and pass orders on Exts.P1 to P4 in accordance with law after affording an opportunity of being heard to the petitioners and other affected persons if any, within three months from the date of receipt of a copy of this Judgment.

24.05.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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